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**PUC DOCKET NO. 32024  
SOAH DOCKET NO. 473-03-0957**

<b>APPLICATION OF DIALTONE SERVICES, L.P. TO AMEND ITS DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER AND AN ELIGIBLE TELECOMMUNICATIONS PROVIDER TO INCLUDE STUDY AREAS SERVED BY CERTAIN RURAL TELEPHONE COMPANIES</b>	<b>§ § § § § § § § §</b>	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
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**ORDER**

This Order addresses the application of DialToneServices, L.P. (DTS) for designation as an eligible telecommunications carrier (ETC) and an eligible telecommunications provider (ETP) in the study areas of eight rural incumbent local exchange carriers. The State Office of Administrative Hearings (SOAH) administrative law judge (ALJ) issued a proposal for decision (PFD) on May 9, 2006 in which she recommended granting DTS's application for ETC and ETP designation. The ALJ modified the PFD by letter on May 25, 2006.

Consistent with the discussion below, the Commission adopts the PFD including findings of fact and conclusions of law. In particular, the Commission modifies and makes additions to the findings of fact and conclusions of law as noted below.

**I. Discussion**

The Commission finds that certain conclusions of law need to be added to the PFD to clarify precisely which rules of the Commission apply to DTS's application, both for ETC and ETP designation. In addition, these conclusions of law will clarify which of the findings of fact support DTS's application for ETC designation, and which of the findings of fact go to DTS's application for ETP designation. To achieve these

objectives, conclusions of law 9A, 9B, 9C, 16A, 16B, 16C, and 16D are added, and conclusion of law 8 is modified.

Also, the Commission finds that an additional finding of fact is needed to explicitly reflect the ALJ's implicit conclusion that DTS's application is in the public interest. Accordingly, finding of fact 31 is added.

## **II. Findings of Fact**

1. On November 9, 2005, DialToneServices, L.P. (DTS) filed an application for designation as an Eligible Telecommunications Carrier (ETC) and an Eligible Telecommunications Provider (ETP) in the study areas of eight rural incumbent local exchange carriers (ILECs).
2. The eight rural ILECs referenced in the above finding of fact are Dell Telephone Cooperative, Inc.; Alenco Communications, Inc. d/b/a ACI; Riviera Telephone Company, Inc.; Big Bend Telephone Company, Inc.; Valley Telephone Cooperative, Inc.; Border to Border Communications, Inc.; XIT Rural Telephone Cooperative, Inc.; and West Texas Rural Telephone Cooperative, Inc.
3. On November 22, 2005, DTS filed an amendment to its application.
4. On November 28, 2005, Commission Order No. 2 waived the requirement in P.U.C. SUBST. R. 26.417(f)(1)(B)(i)(II) that DTS receive ETC designation before applying for ETP designation, allowing concurring processing of both requests.
5. On December 13, 2005, Alenco Communications, Inc. d/b/a ACI; Riviera Telephone Company, Inc.; Big Bend Telephone Company, Inc.; and Valley Telephone Cooperative, Inc. (collectively, Intervenors) filed motions to intervene.
6. On January 3, 2006, this application was referred to the State Office of Administrative Hearings (SOAH).
7. On January 27, 2006, the Commission issued its Preliminary Order, identifying two issues to be addressed:

- a. Does DTS's application for ETC designation satisfy the requirements of 47 U.S.C. § 214(e), 47 C.F.R. § 54.201 and P.U.C. SUBST. R. 26.418?
  - b. Does DTS's application for ETP designation satisfy the requirements of PURA § 56.023 and P.U.C. SUBST. R. 26.417?
8. On February 13, 2005, the parties filed a stipulation agreeing that the financial impact of this application's outcome on the incumbent local exchange carriers (ILECs) was not a relevant issue in this proceeding.
9. Under P.U.C. Subst. R. 26.418(g)(2)(D), the effective date of the application was suspended to 120 days after DTS filed all of its direct testimony and exhibits. DTS filed its direct testimony on February 2, 2006, which established an effective date of June 2, 2006.
10. On March 29, 2006, SOAH Administrative Law Judge (ALJ) Michael J. O'Malley convened a hearing on the merits. Appearances were entered by DTS, Intervenors, and Commission Staff. The record closed April 14, 2006.
11. Subsequent to the hearing, this case was reassigned to SOAH ALJ Lilo D. Pomerleau, who has read the record.
12. DTS provides local exchange service via Mobile Satellite Service (MSS), which is a subset of Commercial Mobile Radio Service (CMRS).
13. DTS will offer the following specific services:
  - a. voice grade access to the public switched network, meaning that DTS customers are able to make and receive calls via satellite technology;
  - b. local usage—customers can request an option that enables them to place unlimited calls within the traditional local calling scope for a fixed monthly fee, or choose a package where they can receive 300 minutes of usage for a fixed monthly fee for calls within the United States, Canada, and Puerto Rico;
  - c. dual tone multi-frequency signaling or its functional equivalent;
  - d. single-party service or its functional equivalent;
  - e. access to emergency services;
  - f. access to operator services;
  - g. access to interexchange service;

- h. access to directory assistance; and
  - i. toll limitation for qualifying low-income consumers.
14. DTS will provide all of the specific services designated for FUSF support throughout its designated ETC service areas using MSS.
  15. DTS will advertise the availability of and charges for the supported services using media of general distribution.
  16. DTS will offer Lifeline and Linkup service to qualifying low-income consumers.
  17. DTS will offer and provide service to any consumer in its designated ETC service areas.
  18. DTS will use MSS obtained through Globalstar USA in addition to other facilities owned by DTS and thus meets the requirement of using either its own facilities or a combination of its own facilities and resale of another carrier's services.
  19. Telecommunications competition in rural areas is generally in the public interest because it brings service options to customers that typically do not have many telecommunication options.
  20. DTS will offer fundamental service that includes unlimited calling within the ILEC local calling scope at a cost of no more than 150% of the rate in the ILEC's tariff. It will also offer packages to customers that will include 300 nationwide minutes of usage for \$14.95 and will offer the service on a fixed or on a mobile basis.
  21. DTS will offer secure service to its customers through its satellite service.
  22. DTS's satellite technology offers both reliability and redundancy as it can operate when weather interferes with other communications systems.
  23. Satellite service can reach areas where service by land-line or cellular coverage may be impractical, is reliable, offers potential public safety benefits not otherwise affordable, and may provide mobile service in areas without cellular coverage.

24. DTS will provide complete coverage for the service area and has committed to serve any requesting customer in the service area, with an explicit commitment to provide coverage to unserved and under-served areas.
25. DTS will use universal service funds to obtain full satellite connectivity and provide all additional network facilities (wire, mounts, poles, offset brackets, network interface boxes, grounding equipment, lightning rods, towers and other equipment) for the areas it serves.
26. DTS will absorb the installation costs, which it estimates will range from \$2,000 to \$30,000 per customer.
27. DTS has the following consumer protection actions planned: the Commission's customer protection rules have been incorporated into DTS's Customer Guide; it will provide a point of contact for customer complaints; and it will provide the Commission with annual reports regarding the number of complaints per 1,000 handsets and the results of its annual customer satisfaction survey.
28. DTS will offer all elements of basic local telephone service including flat rate local exchange service, primary directory listings, access to telecommunications relay service, ability to report service problems seven days a week and an annual local directory.
29. DTS's rates for basic local telephone service will not exceed 150% of the tariffed rate offered by the ILEC's currently serving the requested areas.
30. DTS will offer continuous and adequate service, as required by P.U.C. SUBST. R. 26.52, 26.53, 26.54 and the Commission's orders in *Application of DialToneServices, L.P. for Designation as an Eligible Telecommunications Carrier Pursuant to P.U.C. SUBST. R. 26.418*, Docket No. 30765 (Aug. 2, 2005); *Application of DialToneServices, L.P. for Designation as an Eligible Telecommunications Carrier Pursuant to P.U.C. SUBST. R. 26.418*, Docket No. 30812 (Aug. 2, 2005).

31. Designation of DTS as an ETC and an ETP will benefit consumers and is consistent with the public interest.

### **III. Conclusions of Law**

1. DTS is a common carrier, pursuant to 47 U.S.C. § 153(10), and a telecommunications provider, as defined by the Public Utility Regulatory Act, TEX. UTIL. CODE ANN. § 51.002(10)(A)(iv) (Vernon 1998 & Supp. 2005) (PURA).
2. MSS is a subset of commercial mobile radio services (CMRS) pursuant to Federal Communications Commission (FCC) regulations, 47 C.F.R. § 20.9(10) and 20.9(14).
3. The Commission has jurisdiction over this docket pursuant to the 47 U.S.C. § 214(e) and the PURA Chapter 52.
4. The notice provided in this docket complies with P.U.C. PROC. R. 22.55 and P.U.C. SUBST. R. 26.417(f) and 26.418(g).
5. The FTA requires the FCC and the states to act jointly to establish a mechanism for universal service fund support to ensure the availability of quality, affordable telecommunications services to all Americans consistent with 47 U.S.C. § 254(a).
6. The federal mechanism for universal service support is the FUSF.
7. A carrier must be an ETC to be eligible for FUSF support.
8. A carrier must meet the requirements of P.U.C. SUBST. R. 26.418 in order to be designated as an ETC by the Commission.
9. DTS's proposed service will be of material benefit beyond the status quo of the telephone services currently available.
- 9A. The Commission's rules related to ETC designation are P.U.C. SUBST. R. 26.418.
- 9B. To be designated as an ETC a carrier must prove:

- a. it is a common carrier under federal law consistent with P.U.C. SUBST. R. 26.418(a);
  - b. it offers the services specified for FUSF support in 47 C.F.R. § 54.101(a) (the federally supported services) throughout the ILEC's study area, either through its own facilities or a combination of its own facilities and resale of another carrier's services consistent with P.U.C. SUBST. R. 26.418(b)(2) and (c)(1).
  - c. it advertises the availability of and charges for such services using media of general distribution consistent with P.U.C. SUBST. R. 26.418(c)(2); and
  - d. it offers Lifeline Service to qualifying low-income consumers, and toll limitation services consistent with P.U.C. SUBST. R. 26.418(d)(2-3).
- 9C. The following services are designated for support in 47 C.F.R. § 54.101(a):
- a. voice-grade access to the public switched network;
  - b. local usage;
  - c. dual-tone multi-frequency signaling;
  - d. single-party service;
  - e. access to emergency services;
  - f. access to operator services;
  - g. access to interexchange service;
  - h. access to directory assistance;
  - i. toll limitation for qualifying low-income consumers.
10. DTS can provide the FCC's supported services as required by 47 C.F.R. § 54.101 (a)(1).
11. Consistent with P.U.C. SUBST. R. 26.418(b)(2) and (c)(1), DTS can provide the federally supported services throughout the wire centers for which it seeks ETC designation.



12. DTS meets the public interest requirement for designation as an ETC in a rural area as required by 47 U.S.C. § 214(e) and P.U.C. SUBST. R. 26.418(e)(2).
13. Consistent with P.U.C. SUBST. R. 26.418(c)(2), DTS will advertise the availability of and charges for the federally supported services.
14. Consistent with P.U.C. SUBST. R. 26.418(d)(2) and (3), DTS will provide Lifeline and Linkup services, and toll limitation.
15. DTS satisfies the federal and state requirements for designation as an ETC in the requested exchanges.
16. DTS satisfies the requirements of P.U.C. SUBST. R. 26.417(c)(1)(B) to be designated as an ETP for the high cost service areas requested in this application.
- 16A. DTS must provide continuous and adequate service in compliance with the quality of service standards defined in P.U.C. SUBST. R. 26.52 through 26.54, as required by P.U.C. SUBST. R. 26.417(c)(1)(D), to the extent the terms of those rules are applicable to CMRS satellite ETP providers.
- 16B. DTS must meet the requirements of P.U.C. SUBST. R. 26.54, including service objectives and performance benchmarks, that are reasonably made applicable to CMRS satellite ETP providers, or will provide some functional equivalent thereof. Specifically, the subsections of P.U.C. SUBST. R. that are applicable to DTS include the following:
  - a. DTS will make available to all subscribers a dedicated message path for single party service, as required by P.U.C. SUBST. R. 26.54(b)(1).
  - b. DTS will provide service to allow transmission of at least 14,400 bits of data per second, as required by P.U.C. SUBST. R. 26.54(b)(3).
  - c. DTS will submit the quarterly report described by P.U.C. SUBST. R. 26.54(c).
  - d. DTS will comply with installation standards in P.U.C. SUBST. R. 26.54(c)(1).
  - e. DTS will comply with the standards contained in P.U.C. SUBST. R. 26.54(c)(2) regarding operator-handled calls.

- f. DTS will comply with P.U.C. SUBST. R. 26.54(c)(3) related to local dial service.
  - g. P.U.C. SUBST. R. 26.54(c)(5) provides a benchmark for completion of properly dialed calls. Although the requirements of this subsection are written in terms of trunks and related switching equipment, and therefore appear inapplicable to DTS's satellite technology, DTS will be required to comply with the aspect of this subsection that requires completing no less 97% of properly dialed calls. DTS will comply with this standard.
  - h. The benchmarks for carrier services in terms of number of customer trouble reports and responses thereto established by P.U.C. SUBST. R. 26.54(c)(6) are not technology specific and there is no evidence to support a finding that DTS should be exempted from these requirements. Therefore, DTS will be required to comply with this requirement. DTS will comply with this standard.
- 16C. The terms of P.U.C. SUBST. R. 26.54(c)(7) regarding transmission requirements for all voice grade trunk facilities are inapplicable to DTS because DTS does not employ trunk facilities.
- 16D. P.U.C. SUBST. R. 26.54(c)(7)(B) provides a standard for decibel loss on direct distance dialing. It is not clear whether it is possible to measure decibel loss or impulse noise on satellite transmission. To the extent that such measurements are or become feasible DTS will comply with these standards or the satellite equivalent.

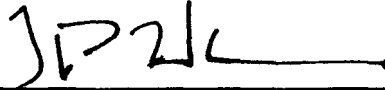
#### **IV. Proposed Ordering Paragraphs**

In accordance with these findings of fact and conclusions of law, the Commission issues the following order:

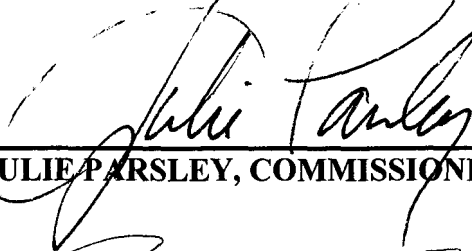
1. The application of DTS for designation as an ETC and ETP in the requested exchanges of Dell Telephone Cooperative, Inc.; Alenco Communications, Inc. d/b/a ACI; Riviera Telephone Company, Inc.; Big Bend Telephone Company, Inc.; Valley Telephone Cooperative, Inc.; Border to Border Communications, Inc.; XIT Rural Telephone Cooperative, Inc.; and West Texas Rural Telephone Cooperative, Inc. is granted.
2. DTS shall include language in all service contracts, or in separate statements given to all customers, advising customers of the availability of Lifeline and Link Up Services.
3. DTS shall comply with new Commission rules and amendments to existing rules that apply to DTS's service area as an ETC and ETP in Texas.
4. DTS shall comply with the Commission's Quality of Service Rules and Commission Orders found in Docket Nos. 30812 and 30765.
5. For each designated ETP service area, DTS shall file with the Commission, in Project 31394, no later than September 1, 2006, and by September 1 of each subsequent year, and submit to OPC and the State: (1) the results of an annual customer satisfaction survey, and any relevant background documents, such as a copy of the survey itself, within 30 days of the completion of the survey; (2) the total number of complaints received, per 1,000 customers; and (3) a point of contact within DTS to address any customer service or service quality complaints received by the Commission or OPC. In the future, the Commission may require that DTS file the information required in this Order in an alternate project.
6. DTS shall notify the Commission when it begins providing service to each area for which it is designated as an ETC and ETP in this Order, and shall provide a detailed description of the advertising it is doing in those areas.
7. All other motions, requests for entry of specific fact findings and legal conclusions, and any other requests for general or specific relief, if not expressly granted, are denied.

SIGNED AT AUSTIN, TEXAS the 22nd day of June 2006.

PUBLIC UTILITY COMMISSION OF TEXAS



PAUL HUDSON, CHAIRMAN



JULIE PARSLEY, COMMISSIONER



BARRY T. SMITHERMAN, COMMISSIONER